IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. KENDRICK BUTLER, also known as "Freeze," Defendant.	No. CR 08-72-MWB **REVISED INSTRUCTIONS TO THE JURY**

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VERDICT FORM

INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, I am giving you these Revised Instructions, because at the beginning of trial, I told you that Darrell Sanders was also a defendant in this case. Since the trial started, the charges against defendant Sanders have been disposed of, and he is no longer a defendant in this case. You should not guess about or concern yourselves with the reason for this disposition. You are not to consider this fact when deciding if the prosecution has proved, beyond a reasonable doubt, its case against defendant Kendrick Butler.

As I told you at the start of trial, I am giving you these Instructions to help you better understand the trial and your role in it. Consider these instructions, together with all written and oral instructions that I may give you during or at the end of the trial, and apply them as a whole to the facts of the case.

As Judge Scoles explained during jury selection, in an Indictment, a Grand Jury charges defendant Kendrick Butler with seven counts of "financial institution fraud." As Judge Scoles also explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. Defendant Butler has pled not guilty to the crimes charged against him, and he is presumed to be innocent of each offense unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

Your duty is to decide from the evidence whether the defendant is not guilty or guilty of the charges against him. You will find the facts from the evidence.

You are the sole judges of the facts, but you must follow the law as stated in these instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law in these instructions. Do not take anything that Judge Scoles said or did during jury selection or that I may say or do during the trial as indicating what we think of the evidence or what we think your verdict should be. Similarly, do not conclude from any ruling or other comment that Judge Scoles or I have made or that I may make that we have any opinions on how you should decide the case.

Please remember that only defendant Kendrick Butler, not anyone else, is now on trial here Also, remember that this defendant is on trial *only* for the offenses charged against him in the Indictment, not for anything else.

Defendant Butler is entitled to have each charge against him considered separately based solely on the evidence that applies to that charge. *Therefore, you must give separate consideration to each charge against the defendant and return a separate, unanimous verdict on each charge against him.*

INSTRUCTION NO. 2 - PRELIMINARY MATTERS

Before I turn to specific instructions on the offenses charged in this case, I must explain some preliminary matters.

"Elements"

The "financial institution fraud" offenses charged in this case each consist of "elements," which the prosecution must prove beyond a reasonable doubt against the defendant charged with that offense in order to find him guilty of that offense. I will summarize in the following instructions the elements of "financial institution fraud."

Timing

The Indictment alleges that the defendant pursued the alleged financial institution fraud scheme beginning "in or around" one date and "continuing through" another date and that each "financial institution fraud" offense occurred on or about a certain date. The prosecution does not have to prove with certainty the exact date of a charged offense. It is sufficient if the prosecution's evidence establishes that a charged offense occurred within a reasonable time of the date alleged for that offense in the Indictment.

Nicknames

You may hear evidence in this case that defendant Kendrick Butler sometimes goes by, is also known as, or identifies himself by the nickname "Freeze." The identity of the defendant as the person who committed the charged offense is an element of every offense. Therefore, the prosecution must prove beyond a

reasonable doubt not only that the offense alleged was actually committed, but also that the defendant charged with that offense was the person who committed it. The defendant does not have to prove that he did not commit the offense, that someone else committed the offense, or that he is not the person identified by a certain nickname. Therefore, if the facts and circumstances that will be introduced in evidence leave you with a reasonable doubt as to whether or not the defendant is the person who committed the charged offense, then you must find him not guilty of that offense.

"Knowledge" and "Intent"

The elements of the charged "financial institution fraud" offenses require proof of the defendant's "knowledge" and "intent." "Knowledge" and "intent" are mental states. Where the defendant's mental state is an element of an offense, the defendant's mental state must be proved beyond a reasonable doubt. It is seldom, if ever, possible to determine directly the operations of the human mind. Nevertheless, "knowledge" and "intent" may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence.

An act was done "knowingly" if the defendant was aware of the act and did not act through ignorance, mistake, or accident. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful. An act was done "intentionally" if the defendant did the act voluntarily, without coercion, and not because of ignorance, mistake, accident, or inadvertence.

Stipulations

The parties may have "stipulated" or agreed that certain facts are as counsel will state. Therefore, you must treat facts to which the parties have stipulated as having been proved.

* * *

I will now give you more specific instructions about the offenses charged in the Indictment.

INSTRUCTION NO. 3 - THE FINANCIAL INSTITUTION FRAUD SCHEME AND THE FINANCIAL INSTITUTION FRAUD CHARGES

As Judge Scoles explained during jury selection, the Indictment charges that, beginning in or around July 2005, and continuing through in or around February 2008, defendant Butler and others knowingly executed and attempted to execute a scheme to defraud financial institutions and to obtain the moneys, funds, assets, and other property owned by, and under the custody and control of, financial institutions by means of false or fraudulent pretenses, representations, and promises.

The Indictment alleges that the "financial institution fraud scheme" was carried out in the following way:

The defendant and his co-schemers manufactured or otherwise obtained counterfeit checks purportedly issued by fictitious companies called Select Management Resource, G&B Trucking Company, Nestle US Food Service, Alden Village Health Facility for Children and Young Adults, Inc., John Burns, John Burns Construction Company, Key Colony, Inc., and others. Some of the counterfeit checks bore the legitimate account number at First Midwest Bank in Itasca, Illinois, for the account of a legitimate Illinois company and the legitimate routing number for First Midwest Bank. The defendant and his co-schemers recruited individuals to cash the counterfeit checks at various banks, credit unions, and elsewhere, using newly opened or pre-existing accounts at the banks, credit unions, and elsewhere. The recruited individuals then returned the proceeds from the cashed counterfeit checks to the defendant and two other co-schemer who, in

turn, paid the recruited individuals for their fraudulent efforts, but kept the remaining fraudulent proceeds for their own use and benefit. In this manner, the banks, credit unions, and other institutions were defrauded out of more than $77,888.16.

Defendant Kendrick Butler is charged with seven counts of "financial institution fraud" in **Counts 2**, **3**, **10**, **13, 14**, **15**, and **16** of the Indictment allegedly arising from this "financial institution fraud scheme." These counts charge that defendant Butler caused the counterfeit check in question to be cashed by a financial institution. More specifically, the Indictment charges the following "financial institution fraud" offenses:

Count 2 charges that, on or about January 16, 2007, defendant Butler caused counterfeit check number 15650, in the amount of $1,850.00, to be cashed at Hills Bank and Trust.

Count 3 charges that, on or about January 16, 2007, defendant Butler caused counterfeit check number 15655, in the amount of $1,650.00, to be cashed at Hills Bank and Trust.

Count 10 charges that, on or about January 19, 2007, defendant Butler caused counterfeit check number ending in 9629, in the amount of $1,697.00, to be cashed at Hills Bank and Trust.

Count 13 charges that, on or about January 30, 2007, defendant Butler caused counterfeit check number 10868, in the amount of $1,865.00, to be cashed at Linn Area Credit Union.

Count 14 charges that, on or about January 30, 2007, defendant Butler caused counterfeit check number 10866, in the amount of $1,878.00, to be cashed at Farmers State Bank.

Count 15 charges that, on or about January 31, 2007, defendant Butler caused counterfeit check number 81009, in the amount of $2,976.00, to be cashed at Linn Area Credit Union.

Count 16 charges that, on or about February 2, 2007, defendant Butler caused counterfeit check number 81012, in the amount of $2,763.00, to be cashed at Linn County State Bank.

INSTRUCTION NO. 4 - THE ELEMENTS OF FINANCIAL INSTITUTION FRAUD

The defendant can be found guilty of each offense charged against him either because he personally committed that offense or because he aided and abetted another to commit that offense. I will now explain the elements of these "personal commission" and "aiding and abetting" alternatives.

Personal commission alternative

For you to find defendant Butler guilty of a particular "financial institution fraud" Count, under this "personal commission" alternative, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements as to him and as to that Count:

***One*, defendant Butler knowingly executed either (a) a scheme to defraud a financial institution, or (b) a scheme to obtain moneys from a financial institution.**

> The prosecution does not have to prove all of the details alleged in the Indictment concerning the precise nature and purpose of the "financial institution fraud scheme." However, the prosecution must prove that the defendant knowingly executed either or both of the following financial institution fraud schemes:
>
> **(a)** The first alternative requires the prosecution to prove a "scheme to defraud," which is any plan or course of action intended to deceive by employing material falsehoods, concealing material facts, or omitting material facts. This alternative is proved if the defendant

defrauded a financial institution. The financial institution was "defrauded" if it was deceived by the defendant's material falsehoods, concealment of material facts, or omission of material facts, whether or not loss to the financial institution has occurred or was intended.

(b) The second alternative requires the prosecution to prove a "scheme to obtain moneys from a financial institution," which is a scheme to obtain the moneys, funds, assets, and other property owned by, or under the custody and control of, a financial institution by means of material false or fraudulent pretenses, representations, and promises. This alternative requires that some loss to the institution actually occurred as the result of the defendant's false or fraudulent pretenses, representations, or promises.

For purposes of both alternatives, a fact, falsehood, representation, pretense, or promise was "false" if it was untrue when made or effectively concealed or omitted a material fact. A fact, falsehood, representation, pretense, or promise was "material" if it had a natural tendency to influence, or was capable of influencing, the decision of the institution in deciding whether or not to cash the counterfeit check. Whether or not the fact, falsehood, representation, pretense, or promise was "material" does *not* depend on whether the institution was actually deceived.

The "scheme to defraud" or the "scheme to obtain moneys" was "executed" each time a separate counterfeit check was cashed. Therefore, each separate counterfeit check that was cashed constituted a separate "financial institution fraud" offense.

***Two*, the defendant did so with the intent to defraud.**

> To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property or property rights to another or for the purpose of bringing about some financial gain to oneself or another to the detriment of a third party. To prove "intent to defraud" based on a false statement, the prosecution must prove that the defendant knew that the statement was untrue when made or that he made the statement with reckless indifference to its truth or falsity.

***Three*, the financial institution was insured by the United States Government.**

> The prosecution must prove beyond a reasonable doubt that the institution that cashed the counterfeit check was insured by the United States Government.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular Count, and as to defendant Butler, then you cannot find defendant Butler guilty of personally committing that Count.

Aiding and abetting alternative

A person can be found guilty of a particular "financial institution fraud" Count, even if he did not personally do every act constituting that offense, if he aided and abetted another to commit that offense.

For you to find defendant Butler guilty of a particular "financial institution fraud" Count, under this "aiding and abetting" alternative, the prosecution must

prove beyond a reasonable doubt *all* of the following essential elements as to him and as to that Count:

***One*, on or about the date alleged, some person or persons personally committed the particular Count of "financial institution fraud" in question.**

> The prosecution must first prove beyond a reasonable doubt that all of the essential elements of "personally committing" the "financial institution fraud" offense in question, as explained above, were committed by some person or persons on or about the date alleged. It is not necessary that the other person or persons be convicted or even identified.

***Two*, the defendant knew that the particular Count of financial institution fraud in question was being committed or was going to be committed on or about the date alleged.**

***Three*, the defendant knowingly acted in some way for the purpose of causing, encouraging, or aiding the other person to commit the particular Count of financial institution fraud in question.**

> You should understand that evidence that a person was merely present at the scene of an event, or merely acted in the same way as others, or merely associated with others does not prove that the person voluntarily aided and abetted the commission of an offense. A person who had no knowledge that a crime was being committed or was going to be committed, but who happened to act in a way that advanced some purpose of that crime, did not thereby become criminally liable for that offense. Also, a person could not have "aided and abetted" the offense, unless that person intended that the particular "financial institution fraud" offense would be committed.

***Four*, the defendant acted with intent to defraud.**

> To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property or property rights to another or for the purpose of bringing about some financial gain to oneself or another to the detriment of a third party. To prove "intent to defraud" based on a false statement, the prosecution must prove that the defendant knew that the statement of the person personally committing the offense was untrue when made or that he knew that the person personally committing the offense made the statement with reckless indifference to its truth or falsity.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular Count, and as to defendant Butler, then you cannot find defendant Butler guilty of aiding and abetting the commission of that Count.

INSTRUCTION NO. 5 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the defendant's arrest or charge or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome as to the defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of an offense charged against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. The burden never shifts to a defendant to prove his innocence. Therefore, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution. Similarly, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of an offense charged against him, you must find him not guilty of that offense.

INSTRUCTION NO. 6 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that no defendant ever has the burden or duty of calling any witnesses or producing any evidence. A reasonable doubt may also arise from the prosecution's lack of evidence. A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. On the other hand, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 7 - DEFINITION OF EVIDENCE

Your verdict must be based only on the evidence presented in this case and these and any other instructions that may be given to you during the trial. Evidence is:

1. Testimony.
2. Exhibits that are admitted into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be "direct" or "circumstantial." The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. For example, some of the evidence in this case may be limited to one of the defendants and, therefore, cannot be considered against the other defendant. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used. Remember that the defendant is entitled to have each charge against him considered separately based solely on the evidence that applies to him and to that charge.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.

3. Testimony that I tell you to disregard.

4. Anything that you see or hear about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence is not determined merely by the number or volume of documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict the witness's testimony. Also, you are free to disbelieve the testimony of any or all witnesses. The quality and weight of the evidence are for you to decide.

INSTRUCTION NO. 8 - CREDIBILITY

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness or unreasonableness of the testimony, and the extent to which the testimony is consistent or inconsistent with any other evidence. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If the defendant testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

Similarly, just because a witness works in law enforcement or is employed by the government does not mean you should give any more or less weight or credence to that witness's testimony than you give to any other witness's testimony.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters in that field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, the reasonableness or correctness of any underlying assumptions or comparisons, any reason that the expert may be biased, and all of the other evidence in the case.

A person who is not an expert may also give an opinion, if that opinion is rationally based on the witness's perception. You may give an opinion of a non-expert witness whatever weight, if any, you think it deserves, based on the reasons and perceptions on which the opinion is based, any reason that the witness may be biased, and all of the other evidence in the case.

If earlier statements of a witness are admitted into evidence, they will not be admitted to prove that the contents of those statements are true, unless I tell you otherwise. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and, therefore, whether they affect the credibility of that witness.

You may hear evidence that one or more witnesses have each been convicted of a crime. You may use that evidence only to help you decide whether or not to believe these witnesses and how much weight to give their testimony.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You may hear evidence that one or more witnesses are testifying pursuant to plea agreements and/or hope to receive reductions in their sentences in return for their cooperation with the prosecution in this case. If the prosecutor handling such a witness's case believes the witness has provided "substantial assistance," the prosecutor can file a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for a witness for substantial assistance unless the prosecutor files a motion requesting such a reduction. If the prosecutor files a motion for reduction of sentence for substantial assistance, then it is up to the judge to decide whether to reduce the sentence of that witness at all, and if so, how much to reduce it, but the prosecutor will recommend the specific reduction that the prosecutor believes is appropriate. You may give the testimony of such witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the witness's hope of receiving a reduction in sentence is for you to decide.

2. You may also hear testimony from one or more witnesses that they participated in one or more of the crimes charged against the defendant. Their testimony will be received in evidence and you may consider it. You

may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may be influenced by the witness's desire to please the prosecutor or to strike a good bargain with the prosecutor about the witness's own situation is for you to decide.

3. You may also hear evidence that one or more witnesses are testifying in the hope that the prosecutor will not file charges against them. Their testimony will be received in evidence and you may consider it. You may give their testimony such weight as you think it deserves. Whether or not a witness's testimony may be influenced by his or her hope that the prosecutor will not file charges against him or her is for you to determine.

4. You may hear evidence that one or more witnesses had an arrangement with the prosecution or law enforcement officers under which the witnesses received cash payments for providing information to the prosecution or law enforcement officers. Their testimony will be received in evidence and you may consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not testimony of a witness may be influenced by receiving a cash payment for information is for you to decide.

5. You may hear evidence that one or more witnesses used or were addicted to addictive drugs during the period of time about which the witness testified. You should consider whether the testimony of these witnesses might be affected by their drug use at the time of the events about which they testify.

6. You may hear evidence that one or more witnesses have pled guilty to a crime that arose out of the same events for which the defendant is on trial here. You must not consider a witness's guilty plea to such a crime as any evidence of the defendant's guilt. You may consider a witness's guilty plea to such a crime only for the purpose of determining how much, if at all, to rely upon that witness's testimony.

More generally, it is your exclusive right to give *any* witness's testimony whatever weight you think it deserves.

INSTRUCTION NO. 9 - EVIDENCE OF THE DEFENDANT'S PRIOR CONVICTION

You may hear evidence that the defendant has previously been convicted of one or more offenses. Unless I tell you otherwise, this evidence may be used only for certain purposes.

First, if the defendant testifies, you may use evidence of any prior conviction to help you decide whether or not to believe his testimony and how much weight to give his testimony.

Second, if the defendant was previously convicted of a similar offense, that is ***not*** evidence that he committed such an act in this case. You cannot convict a person simply because you believe he may have committed similar acts in the past. However, if you are convinced beyond a reasonable doubt, on other evidence introduced, that the defendant did carry out the acts involved in an offense at issue in this case, then you may use evidence of the defendant's prior conviction for a similar offense to help you determine his intent, knowledge, motive, and lack of mistake or accident in carrying out the acts involved in an offense at issue in this case.

I will tell you if evidence of the defendant's prior conviction can be used for any other purpose.

INSTRUCTION NO. 10 - BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 11 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

INSTRUCTION NO. 12 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

INSTRUCTION NO. 13 - CONDUCT OF THE JURY DURING TRIAL

You must decide this case ***solely*** on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations. Thus, to ensure fairness, you must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.

Third, when you are outside the courtroom, do not let anyone tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, or ask you about your participation in it until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.

Fourth, during the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day. It is important that you do justice and also maintain the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even to pass the time of day—a suspicion about your fairness might arise. If any lawyer, party, or witness does not speak to you, it is because he or she is not supposed to talk to you, either.

Fifth, it may be necessary for you to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can explain

when you are required to be in court and warn them not to ask you about this case, tell you anything they know or think they know about this case, or discuss this case in your presence. You must not communicate with anyone about the parties, witnesses, participants, claims, evidence, or anything else related to this case, or tell anyone anything about the jury's deliberations in this case until after I accept your verdict or until I give you specific permission to do so. During the trial, while you are in the courthouse and after you leave for the day, do not provide any information to anyone by any means about this case. Thus, for example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own. Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge.

Seventh, do not read any news stories or articles, in print, on the Internet, or in any "blog," about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. If you want, you can have your

spouse or a friend clip out any stories and set them aside to give you after the trial is over. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

Eighth, do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence during deliberations.

Ninth, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

INSTRUCTION NO. 14 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. *Your verdict on each charge against the defendant must be unanimous*. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so consistent with your individual judgment. You must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced that it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on an offense charged against him, then he should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. The opposite also applies for you to find the defendant guilty. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of an offense charged against the

defendant, and if the prosecution fails to do so as to the defendant, then you cannot find him guilty of that offense.

Remember, also, that the question before you can never be whether the prosecution wins or loses the case. The prosecution, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not advocates; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you were. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

INSTRUCTION NO. 15 - DUTY DURING DELIBERATIONS

There are certain rules that you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, if the defendant is guilty of a charged offense, then the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case against him beyond a reasonable doubt.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically*.

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. You must return a unanimous verdict on each charge against the defendant. Nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.

Fifth, in your consideration of whether the defendant is not guilty or guilty of an offense charged against him, you must not consider his race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the

defendant on a charged offense unless you would return the same verdict on that charge without regard to the defendant's race, color, religious beliefs, national origin, or sex. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your decision.

Sixth, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. You will take the verdict form to the jury room. *Again, you must return a unanimous verdict on each charge against the defendant*. When you have reached a unanimous verdict, your foreperson must complete one copy of the verdict form, and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 26th day of October, 2009.

Mark W. Bennett

MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. KENDRICK BUTLER, also known as "Freeze," Defendant.	No. CR 08-72-MWB **REVISED VERDICT FORM**

_____

I. DEFENDANT KENDRICK BUTLER

As to defendant Kendrick Butler, we, the Jury, unanimously find as follows:

COUNT 2		**VERDICT**
Step 1: Verdict	On the "bank fraud" offense charged in **Count 2**, as identified in Instruction No. 3, and explained in Instruction No. 4, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: Alternative(s)	*If you found the defendant "guilty" of this offense*, please indicate the alternative or alternatives on which you found him guilty	
	_____ (a) personally executing a scheme to defraud a financial institution.	
	_____ (b) aiding and abetting another to execute a scheme to defraud a financial institution	
	_____ (c) personally executing a scheme to obtain moneys from a financial institution	
	_____ (d) aiding and abetting another to execute a scheme to obtain moneys from a financial institution	

COUNT 3		VERDICT
Step 1: Verdict	On the "bank fraud" offense charged in **Count 3**, as identified in Instruction No. 3, and explained in Instruction No. 4, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: Alternative(s)	*If you found the defendant "guilty" of this offense*, please indicate the alternative or alternatives on which you found him guilty	
	_____ (a) personally executing a scheme to defraud a financial institution.	
	_____ (b) aiding and abetting another to execute a scheme to defraud a financial institution	
	_____ (c) personally executing a scheme to obtain moneys from a financial institution	
	_____ (d) aiding and abetting another to execute a scheme to obtain moneys from a financial institution	
COUNT 10		**VERDICT**
Step 1: Verdict	On the "bank fraud" offense charged in **Count 10**, as identified in Instruction No. 3, and explained in Instruction No. 4, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: Alternative(s)	*If you found the defendant "guilty" of this offense*, please indicate the alternative or alternatives on which you found him guilty	
	_____ (a) personally executing a scheme to defraud a financial institution.	
	_____ (b) aiding and abetting another to execute a scheme to defraud a financial institution	
	_____ (c) personally executing a scheme to obtain moneys from a financial institution	
	_____ (d) aiding and abetting another to execute a scheme to obtain moneys from a financial institution	

COUNT 13		VERDICT
Step 1: Verdict	On the "bank fraud" offense charged in **Count 13**, as identified in Instruction No. 3, and explained in Instruction No. 4, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: Alternative(s)	*If you found the defendant "guilty" of this offense*, please indicate the alternative or alternatives on which you found him guilty	
	_____ (a) personally executing a scheme to defraud a financial institution.	
	_____ (b) aiding and abetting another to execute a scheme to defraud a financial institution	
	_____ (c) personally executing a scheme to obtain moneys from a financial institution	
	_____ (d) aiding and abetting another to execute a scheme to obtain moneys from a financial institution	
COUNT 14		**VERDICT**
Step 1: Verdict	On the "bank fraud" offense charged in **Count 14**, as identified in Instruction No. 3, and explained in Instruction No. 4, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: Alternative(s)	*If you found the defendant "guilty" of this offense*, please indicate the alternative or alternatives on which you found him guilty	
	_____ (a) personally executing a scheme to defraud a financial institution.	
	_____ (b) aiding and abetting another to execute a scheme to defraud a financial institution	
	_____ (c) personally executing a scheme to obtain moneys from a financial institution	
	_____ (d) aiding and abetting another to execute a scheme to obtain moneys from a financial institution	

COUNT 15		VERDICT
Step 1: Verdict	On the "bank fraud" offense charged in **Count 15**, as identified in Instruction No. 3, and explained in Instruction No. 4, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: Alternative(s)	*If you found the defendant "guilty" of this offense*, please indicate the alternative or alternatives on which you found him guilty	
	_____ (a) personally executing a scheme to defraud a financial institution.	
	_____ (b) aiding and abetting another to execute a scheme to defraud a financial institution	
	_____ (c) personally executing a scheme to obtain moneys from a financial institution	
	_____ (d) aiding and abetting another to execute a scheme to obtain moneys from a financial institution	
COUNT 16		**VERDICT**
Step 1: Verdict	On the "bank fraud" offense charged in **Count 16**, as identified in Instruction No. 3, and explained in Instruction No. 4, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: Alternative(s)	*If you found the defendant "guilty" of this offense*, please indicate the alternative or alternatives on which you found him guilty	
	_____ (a) personally executing a scheme to defraud a financial institution.	
	_____ (b) aiding and abetting another to execute a scheme to defraud a financial institution	
	_____ (c) personally executing a scheme to obtain moneys from a financial institution	
	_____ (d) aiding and abetting another to execute a scheme to obtain moneys from a financial institution	

CERTIFICATION
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offenses regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

_____
Date

_____ _____
Foreperson Juror

_____ _____
Juror Juror

_____ _____
Juror Juror

_____ _____
Juror Juror

_____ _____
Juror Juror

_____ _____
Juror Juror